

STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

DEPARTMENT OF HEALTH :
BOARD OF MEDICAL LICENSURE :
AND DISCIPLINE :

IN RE: NICHOLAS CAPPELLO, M.D. :

A.H. 00-075

ADMINISTRATIVE DECISION

This matter came on for hearing before the duly appointed Hearing Committee of the Board of Medical Licensure and Discipline (hereinafter "Board") on 14 March 2001 upon allegations that Nicholas Cappello, M.D. (hereinafter "Respondent") was guilty of unprofessional conduct in that the Arkansas State Medical Board revoked "Respondent's" license to practice medicine upon a finding that "Respondent" exhibited gross negligence and ignorant malpractice in the treatment he rendered to patients under his care. Such conduct constitutes grounds for discipline in Rhode Island pursuant to Section 5-37-5.1(21) of the Rhode Island General Laws.

The Hearing Committee consisted of Paul E. Sapir, M.D., James F. Griffin, D.O., and Dorothy Williams, public member. The Investigating Committee of the "Board" was represented by Bruce McIntyre, Esq. "Respondent" did not appear at the time and date scheduled for hearing. Mary Ellen McCabe, Esq. acted as legal advisor of the Hearing Committee. No witnesses testified at the hearing. Five (5) exhibits were entered into the record.

TRAVEL AND FACTS

Nicholas Cappello, M.D. is a physician who holds a license to practice medicine in the State of Rhode Island. That on 16 March 2000 the Arkansas State Medical Board issued an Emergency Order of Suspension and Notice of Hearing to "Respondent" (Ex. 4). The basis for said action was that "Respondent" had exhibited gross negligence or ignorant malpractice in his care and treatment of seventeen (17) patients during the years 1998 and 1999. A hearing on the matters contained in the Emergency Order of Suspension and Notice of Hearing was convened on 28 April 2000. "Respondent" did not appear personally or through counsel. An Order was entered by the Arkansas State Medical Board on 5 May 2000, after hearing, revoking the license of Nicholas A. Cappello, M.D. to practice medicine in the State of Arkansas (Ex. 4).

On 10 May 2000 notice of this action was communicated to the Rhode Island Board of Medical Licensure and Discipline (Ex. 4). By letter dated 10 October 2000 "Respondent" was informed that the "Board" was taking action to revoke his license to practice medicine in this state based upon the Order of the Arkansas State Medical Board. No response to this correspondence was received. A Time and Notice of Hearing and Specification of the Charges (Ex. 3) was sent by certified and regular mail to "Respondent" on 9 February 2001 and resent on 6 March 2001. These documents notified "Respondent" that the "Board" proposed to revoke or suspend his license to practice medicine in Rhode Island or otherwise discipline him for the reason that his license to practice medicine in Arkansas was revoked for conduct which constitutes grounds for disciplinary sanctions in Rhode Island pursuant to Section 5-37-5.1(21).

DISCUSSION

Neither Dr. Cappello nor any legal representative of "Respondent" appeared at the hearing. The Time and Notice of Hearing and Specification of the Charges sent by certified mail to Respondent was returned to the Board and marked as "unclaimed" after three (3) attempts at delivery (Ex. 2). The regular mail of the aforementioned Notice and Specification of the Charges was not returned. Likewise, the regular mailing of these documents on 6 March 2001 has not been returned. Accordingly, notice has been effectuated as required by Section 5-37-5.4.

The findings of the Arkansas State Medical Board as set forth in the Emergency Order of Suspension and Notice of Hearing and Order (Ex. 4) establish that "Respondent" rendered substandard care to seventeen (17) patients in conjunction with his practice of medicine. That Board concluded that "Respondent" exhibited gross negligence and ignorant malpractice in the treatment rendered to these patients. Such conduct constituted grounds to revoke "Respondent's" medical license in the State of Arkansas.

Section 5-37-5.1 defines the term "unprofessional conduct" with respect to physicians licensed under Chapter 5-37. Included within this term is "incompetent, negligent or willful misconduct in the practice of medicine" including "any departure from, or failure to conform to, the minimal standards of acceptable and prevailing medical practice" (Section 5-37-5.1(19)). Unequivocally, "Respondent's" actions, had they occurred in this state, are encompassed within the parameters of unprofessional conduct as set forth in Section 5-37-5.1(19).

The fact that "Respondent's" unprofessional practice took place outside Rhode Island does not deprive the "Board" of jurisdiction over the matter, Section 5-37-5.1(21) includes within the definition of unprofessional conduct.

"(21) Surrender, revocation, suspension, limitation of privilege based on quality of care provided, or any other disciplinary action against a license or authorization to practice medicine in another state or jurisdiction; or surrender, revocation, suspension, or any other disciplinary action relating to a membership on any medical staff or in any medical or professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct which would constitute grounds for action as described in this chapter."

Consequently, it is proper for the "Board" to consider the within matter and impose disciplinary sanctions.

FINDINGS AND CONCLUSIONS

The Hearing Committee has carefully reviewed and evaluated all the evidence presented. After consideration and evaluation of the competent, probative, credible evidence presented, the Hearing Committee makes the following:

FINDINGS OF FACT

1. That "Respondent" is licensed to practice medicine in the State of Rhode Island.
2. That the Arkansas State Medical Board entered an Order on 5 May 2000 revoking "Respondent's" license to practice medicine in the State of Arkansas.
3. That the basis for the action by the Arkansas State Medical Board was the fact that "Respondent" rendered substandard treatment to seventeen (17) patients during the years 1998 and 1999. That such conduct established a pattern of gross negligence and ignorant malpractice and, as such, constituted grounds to revoke "Respondent's" medical license.
4. That "Respondent's" gross negligence and ignorant malpractice, if it had occurred in the State of Rhode Island, would constitute unprofessional conduct as that term

is defined in Section 5-37-5.1(19) and, as such, is grounds for the imposition of disciplinary sanctions.

5. That revocation of a license to practice medicine in another state is encompassed within the definition of unprofessional as set forth in Section 5-37.1-5(21) for actions or conduct similar to acts or conduct would constitute unprofessional conduct as defined in Section 5-37.1-5.

Based upon the evidence and Findings of Fact, the Hearing Committee makes the following:

CONCLUSIONS OF LAW

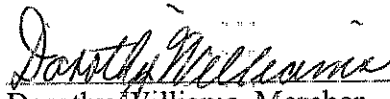
1. That the revocation of "Respondent's" license by the Arkansas State Board of Medicine for gross negligence and ignorant malpractice constitutes grounds for similar action in the State of Rhode Island pursuant to Section 5-37-5.1(21).


ORDER

Based upon the Findings of Fact, Evidence Presented, and Conclusions of Law, the Board hereby enters the following Order:

1. That Respondent's license to practice medicine within the State of Rhode Island is hereby **REVOKED**.

Entered this 28th day of March 2001.


Dorothy Williams, Member


James F. Griffin, D.O., Member


Paul E. Sapir, M.D., Member

Entered as an Order of the Board of Medical Licensure and Discipline and the
Director of Health for the State of Rhode Island this 28th day of March 2001.

Dated: 28 March 2001

Patricia A. Nolan, MD, MPH

Patricia A. Nolan, M.D., M.P.H.

Director of Health

R.I. Department of Health

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You have thirty (30) days in which to appeal this Decision to the Superior Court
of the State of Rhode Island.

CERTIFICATION

I hereby certify that I have mailed a copy of the within Administrative Order and
Decision by certified and regular mail to Nicholas Cappello, M.D., 502 Summer Street,
Manchester, MA 01944 on this 28th day of March 2001.

Carole Allsworth